

**STATEMENT OF THE
AMERICAN FARM BUREAU FEDERATION
TO THE
HOUSE COMMITTEE ON AGRICULTURE
REGARDING
*KELO V. CITY OF NEW LONDON***

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Presented by,
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President, American Farm Bureau Federation

My name is Bob Stallman, and I am a cattle and rice producer from Texas. I also serve as President of the American Farm Bureau Federation. I appreciate the opportunity to be here today to discuss the potentially devastating effect on agriculture of the recent *Kelo* decision. We commend the committee for holding hearings on this important matter so promptly.

The *Kelo* decision has struck a raw nerve around the country. Through the hearing you are having today and through the introduction of H.R. 3405 and similar bills, members of Congress are reacting to this decision, evaluating its impact and assessing the most appropriate legislative response. We are gratified by the number of cosponsors who have signed on to various bills in such a short time. We fully support the efforts that have been taken thus far, and we will work diligently with this committee and others to pass legislation to encourage states to limit their use of eminent domain to truly public uses.

Like all citizens, farmers and ranchers understand that circumstances can sometimes arise in which their land can be acquired for a legitimate public use. We cannot support the underlying philosophy of *Kelo*, however, in which private property can effectively be taken by the public for the profit of other private parties. The difference between legitimate uses of eminent domain and what is so objectionable in *Kelo* is the difference between building firehouses or factories, between courthouses or condominiums.

After *Kelo*, no property is secure. Any property can be seized and transferred to the highest bidder. As Justice O'Connor said in her stinging dissent: "The specter of condemnation hangs over all property. Nothing is to prevent the state from replacing any Motel 6 with a Ritz Carlton, any home with a shopping center, or any farm with a factory."

Agricultural lands are particularly vulnerable to these types of actions. The fair market value of agricultural land is less than residential or commercial property, making a condemnation of agricultural land less costly. While agricultural lands are vital to the nation because they feed our people, they do not generate as much property tax revenue as homes or offices or nearly any other use. As a result, they become very susceptible to

being taken for any of these other uses. Finally, municipalities generally grow outward, into farms and rural areas. There is nothing to stop farms that have been in families for generations from being taken for industrial developments, shopping malls or housing developments.

It is already happening. In one such case, Bristol, Connecticut, has condemned a Christmas tree farm and two homes for a future industrial park.

We are understandably concerned about the possible effects of *Kelo* on farm and ranchlands across the country. Reaction from our members has been swift and overwhelming. Farmers and ranchers from across the country are asking us to help them keep their property.

American Farm Bureau Federation has initiated the “Stop Taking Our Property Campaign” or STOP. This campaign is designed to educate the public about the impacts of the *Kelo* decision and to provide materials to help state Farm Bureaus address the issue. As part of the campaign, we have developed an educational brochure and web page for those interested in the issue.

There are several components to our campaign. One element focuses on encouraging state Farm Bureaus to seek changes to state laws to prohibit the use of eminent domain for private economic development. We have developed model state legislation and supporting documents to help effectuate those changes.

Another key element to our campaign is to encourage and promote passage of H.R. 3405 or similar legislation. Since eminent domain is a creature of state law, substantive statutory change must be made at that level. Getting 50 state legislatures to act, however, is an uncertain and lengthy process. In addition, states interested in maximizing revenues may be reluctant to take action that might deny their municipalities the opportunity for increased property taxes. We believe, however, that most Americans fundamentally disagree with the proposition that increased property taxes provide an excuse for taking one person’s property and giving it to another.

That is why federal legislation is necessary. Eminent domain is defined by state law, not Congress. But Congress has the authority and the responsibility to determine how our tax dollars are spent and not spent. Using federal funds to help municipalities take from the poor and give to the rich adds insult to injury to those who work hard for themselves and their families. As elected officials, you can heed the outrage of your constituents to the *Kelo* decision by ensuring that states and local governments cannot use a person’s own federal tax dollars to dispossess them for the benefit of another private entity.

All of the federal bills introduced thus far take this approach. The difference among them is the degree to which such funding is withheld. H.R. 3083, introduced by Rep. Rehberg and H.R. 3087, introduced by Rep. Gingrey, prohibit any exercise of eminent domain for economic development that uses federal funds. H.R. 3135, introduced by Chairman Sensenbrenner, prohibits a state or municipality from using eminent domain for economic

development if federal funds would in any way be used for the project. H.R. 3405, introduced by Reps. Bonilla and Herseth and which is the subject of this hearing, would deny all federal economic development assistance to a state if there was any use of eminent domain for economic development that transferred private property from one private entity to another.

While we support all these approaches, the provisions of H.R. 3405 seem to offer the most effective deterrent to abuses of the right of eminent domain. By withholding all federal economic development funding from states where *Kelo*-type eminent domain is being used, regardless of whether it is used in a project that uses those funds or not, H.R. 3405 offers the greatest disincentive for states to continue using eminent domain for private economic development. By not tying the funds to any particular project, H.R. 3405 also closes a potential loophole in which federal funds might merely be replaced by other funds in projects that use eminent domain for private economic development.

Even though a slim majority of the Supreme Court upheld the Connecticut law in question, that does not mean it is good policy – nor that all the justices who upheld it think so. Justice Stevens, who wrote the majority opinion in *Kelo*, seems to disagree with the state law he upheld. In a recent address to the Clark County (Nevada) Bar Association, he said, “I was convinced that the law compelled a result that I would have opposed if I were a legislator.”

Mr. Chairman, the American Farm Bureau Federation strongly supports swift congressional action on legislation to withhold federal funding to states and local governments that use eminent domain to take property from one private entity and transfer it to another for economic development purposes. We support H.R. 3405. We applaud the work that you and other members of Congress are doing to address this critical issue, and we want to work with you to assure expeditious consideration of this matter by the full House of Representatives.

Thank you for the opportunity to be here today. I will be pleased to answer any questions you and other members of the committee might have.